



CAMPUS COUNSEL

A Legal Blog Written for Administrators, HR professionals, in-house counsel, and deans at colleges and universities

Permission to Retire: Can Active Litigation Prevent Admission to Life 2.0?

BY LYNETTE PACZKOWSKI • FEBRUARY 12, 2021

Back in 2019, we told you about Jennifer Freyd, a professor at the University of Oregon who had [sued the school and two University officials for gender discrimination](#), claiming that although her own department chair identified a “glaring” pay gap between her and the men she works with, nothing had been done to equalize her pay. The United States District Court for the District of Oregon dismissed Freyd’s case, relying at least in part on duties that her colleagues owed to independent funding sources, not to the University itself, to justify the gender pay gap at the University. Freyd appealed, and her case remains pending in the Ninth Circuit Court of Appeals.

In the meantime, and after 33 years at the University, Professor Freyd was among a group of senior faculty who were offered a retirement package. The University originally took the position that [Freyd could not accept the package unless she dismissed her appeal and dropped the ongoing pay equity lawsuit](#). Freyd responded with an [open letter](#) to the University’s Board of Trustees, arguing that the University’s requirement that would-be retirees release the University from all legal claims is uniquely injurious to her, as the only eligible faculty member currently suing the University, and represents “a new form of discrimination for all those with a history of discrimination.”

Ultimately, the University reversed course, saying in a statement that since Freyd was the only potential retiree with a claim, the University’s general counsel “modif[ied] the waiver to allow any program participant to preserve litigation claims against the [University] that had already been initiated.”

CLIENT TIP

Early retirement incentive programs routinely require participants to sign a waiver of claims in exchange for the package being offered. Prior to issuing the offer, institutions are well-advised to review the list of eligible participants to determine whether there are any known or anticipated claims. Particularly where there is active litigation, decisions should be made up-front regarding how best to proceed.